

Message Text

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INFO OCT-01 AF-05 ARA-10 EUR-06 EA-04 ADP-00 /029 R

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DRAFTED BYL/ OA: MHNORDQUIST

APPROVED BY CL/ OA: MHNORDQUIST

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R 162130 Z APR 73

FM SECSTATE WASHDC

TO AMEMBASSY STOCKHOLM

AMEMBASSY SANTIAGO

AMEMBASSY MOSCOW

AMEMBASSY MANILA

AMEMBASSY LIMA

AMEMBASSY ACCRA

UNCLAS STATE 070709

FOLLOWING SENT ACTION SECSTATE APRIL 7, FROM USUNNY
REPEATED TO YOU QUOTE:

UNCLAS USUN 1262

E. O. 11652: N/ A

TAGS: PBOR, UN

SUBJECT: LOS: SUBCOMITTEE I, APRIL 5

1. SUMMARY: SUBCOMITE I HELD FINAL MEETING . US CIRCULATED
REPLACEMENT PAGES FOR US GEOLOGICAL SURVEY PROFESSIONAL
PAPER 817 DISTRIBUTED MARCH 13, AND DEPT OF STATE GEOGRAPHER' S
STUDY " LIMITS IN THE SEAS" FIRST REVISION. SECRETARIAT
DISTRIBUTED FINAL TEXTS RESULTING FROM WORKING GROUP' S (WG)
SECOND READING OF REGIME PRINCIPLES (A/ AC.138/ SC. I/ L.22).
EXTENSIVE DEBATE ON PROGRESS OF WG AND SC' S WORK FOLLOWED.
END SUMMARY.

2. CHAIRMAN ENGO REVIEWED SC I WORK. HE STATED THAT SC HAD NOT
REACHED STAGE YET OF NEGOTIATING FAR REACHING ACCOMMODATIONS.
EXPRESSED BELIEF THAT THE (WG) HAD TAKEN NEGOTIATIONS ON REGIME
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AS FAR AS POSSIBLE AT THIS STAGE AND TO GO FURTHER WOULD
REQUIRE RESOLUTION OF TWO ISSUES: RANGE AND NATURE OF ACTIVITIES
OF REGIME, AND WHO MAY EXPLOIT THE AREA. SC WILL FACE THESE

ISSUES AT SUMMER SESSION. HE URGED REPS TO CONSIDER PROBLEMS OF COMPOSITION AND COUNCIL VOTING AS WELL.

3. SWEDEN MADE SUBSTANTIVE STATEMENT IN WHICH HE URGED THAT ALTERNATIVE RATHER THAN BRACKETED TEXTS BE USED BY WG. HE ADVISED SC THAT LANGUAGE IN DECLARATION ON PRINCIPLES REPRESENTED HARD-FOUGHT COMPROMISES AND THAT IN MANY CASES IT SHOULD REMAIN INTACT IN TREATY. PARTICULARLY HE NOTED THAT SOME ALTERNATIVES IN REGIME ARTICLES TENDED TO ERODE CONCEPT OF COMMON HERITAGE. SUGGESTED THAT ART. 8 (RESERVATION OF THE AREA EXCLUSIVELY FOR PEACEFUL PURPOSES) BE KEPT IN GENERAL LANGUAGE APPEARING IN DECLARATION LEAVING SPECIFICS OF THIS CONCEPT TO BE WORKED OUT BY OTHER BODIES LIKE CCD. WITH RESPECT TO WHO MAY EXPLOIT THE AREA HE PROPOSED THAT AUTHORITY BE EMPOWERED TO ISSUE LICENSES FOR EXPLOITATION OF BOTH LIVING AND NON-LIVING RESOURCES TO STATES OR POSSIBLY NATURAL OR JURIDICAL PERSONS SPONSORED BY STATES. STATES SHOULD ALSO BE ABLE TO ISSUE SUBLICENSES TO PRIVATE ENTITIES IF STATES GUARANTEED RESPONSIBILITY TO AUTHORITY. HE DECLARED THAT AUTHORITY SHOULD BE EMPOWERED TO DIRECTLY EXPLOIT, FOR IT WOULD IN TIME BECOME BEST JUDGE ON HOW TO DEVELOP RESOURCE. HIS SUPPORT FOR STRONG MACHINERY WAS BASED ON SETTING LIMITS SO THAT MEANINGFUL AREA WAS TO FALL UNDER ITS REGULATION (I.E., NOT JUST ABYSSAL OCEAN FLOOR). SWEDEN NOTED WITH GREAT INTEREST US PROPOSAL ON PROVISIONAL REGIME AND COULD ALREADY AGREE THAT RAPID ENTRY INTO FORCE WAS DESIRABLE. RAISED QUESTION WHETHER ALL OR PART OF TREATY SHOULD BE IMPLEMENTED.

4. CHILE URGED THAT ALL DIFFERENCES SHOULD BE DEBATED AND THAT VIEWS SHOULD BE MORE OR LESS RECONCILED PRIOR TO CONFERENCE. HE SAID THAT BASIC ELEMENTS FOR NEGOTIATION SHOULD INCLUDE MEANING OF COMMON HERITAGE AND ITS IMPLEMENTATION IN TREATY WHICH, HE SAID, WAS QUESTION OF RIGHT OF ALL STATES TO INDIVISIBLE PROPERTY WITH DIVISIBLE RESOURCES. COMMON HERITAGE DERIVED FROM CONCEPT OF PATRIMONY AND HAD CLEAR LEGAL MEANING. HE STATED SCOPE OF REGIME SHOULD INCLUDE PRODUCTION, MARKETING, POLLUTION AND SCIENTIFIC RESEARCH. HIS SUPPORT FOR EXPLOITATION THROUGH CONTRACTS RATHER THAN LICENSES WAS RELATED TO COMMON HERITAGE. HE STRESSED THAT THERE MUST BE POLITICAL NEGOTIATIONS

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IN GENEVA THIS SUMMER OR THERE WOULD BE CHAOS AT CONFERENCE. HE URGED THAT PRINCIPLES NOT BE RENEGOTIATED.

5. CZECHOSLOVAKIA URGED SC TO TRY TO RECONCILE DIFFERENCES AND WARNED THAT IF EXTREMIST TENDENCIES PREVAIL THERE CAN BE NO AGREEMENT ON MACHINERY.

6. US REP (RATINER) INTERVENED COMMENTING ON SWEDISH AND CHILEAN STATEMENTS. US REP SAID THAT WHILE IN GENERAL AGREEMENT WITH SWEDISH STATEMENT ON ALTERNATIVE TEXTS, DEVELOPMENT OF

ALTERNATIVE TEXTS TEND TO POLARIZE NEGOTIATIONS. WHERE THERE ARE UNUSUAL DIFFICULTIES THERE SHOULD BE EFFORT TO PRODUCE ALTERNATIVE TEXTS WHICH REPRESENT COMPROMISE AS A BASIS FOR NEGOTIATIONS AT A LATER STATE. HE REMINDED SWEDEN THAT COMPROMISE LANGUAGE IN DECLARATION ON PRINCIPLES MIGHT NOT BE SUITABLE FOR TREATY ARTICLES OF SPECIFIC NATURE AND THAT ATTEMPTS MUST BE MADE TO RESOLVE RATHER THAN " PAPER OVER" DIFFERENCES. US OPPOSES EMPOWERING AUTHORITY TO DIRECTLY EXPLOIT, EVEN IF STATES OR PERSONS ARE ALSO GIVEN THIS RIGHT. SWEDEN' S APPARENT ATTEMPT TO JUSTIFY THIS ON BASIS OF AUTHORITY' S REGULATORY POWERS WAS PARTICULARLY DISTURBING. IT WAS INCONCEIVABLE TO US THAT AUTHORITY COULD BOTH REGULATE AND EXPLOIT FOR THIS WOULD PROVIDE NO " DUE PROCESS" OR PROTECTION TO OTHER ENTITIES WHO WERE PERMITTED TO DO SO. REFERRING TO COMMENT BY CHILE, US REP SAID HE CAN AGREE WITH VIEW THERE SHOULD BE EARLY NEGOTIATIONS AND POINTED OUT THAT NO PRESENT TEXT WOULD HAVE WIDE SUPPORT AND COMPROMISE IS ESSENTIAL TO ACHIEVE UNIVERSAL TREATY. AS TO COMMON HERITAGE, US REP SAID THERE ARE DIFFERENT INTERPRETATIONS AND THAT US DISAGREED THAT IT MEANT PATRIMONY. US VIEW WAS THAT CONCEPT COULD ONLY BE GIVEN LEGAL MEANING THROUGH TREATY PROVISIONS. HE EXPRESSED HOPE THAT EFFORTS WOULD BE TO NEGOTIATE ITS MEANING AND NOT TO MERELY DRAFT ARTICLES TO FIT ITS INTERPRETATION BY SOME DELEGATIONS.

7. USSR SAID THERE HAD BEEN NO SUCCESS BUT SOME PROGRESS IN WG. HE STATED THAT USSR HAD MADE SEVERAL IMPORTANT CONCESSIONS: AKNOWLEDGEMENT THAT SEABED SHOULD BE REGARDED AS COMMON HERITAGE (ALTHOUGH NOTING THAT THERE ARE VARIOUS INTERPRETATIONS OF CONCEPT). STATEMENT THAT USSR HAS NO OBJECTION TO AUTHORITY' S DIRECTLY EXPLOITING AREA WHEN IT IS ABLE TO DO SO, AS LONG AS THE RIGHTS OF STATES TO EXPLOIT ARE ENSURED; WILLINGNESS OF USSR TO CHANGE ITS POSITION ON ARTICLE ON APPLICABILITY OF UNCLASSIFIED

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PRINCIPLES OF INTERNATIONAL LAW. HE SAID ONLY IN SUCH A SPIRIT OF COMPROMISE COULD NEGOTIATIONS BE SUCCESSFUL BUT STRESSED THAT CONCESSIONS ARE NOT A ONE- WAY STREET AND MUST BE RECIPROCATED. HE NOTED THAT CHILE WANTS SUCCESSFUL CONFERENCE AND AS HOST COUNTRY IS IN A DELICATE AND DIFFICULT POSITION AND HE OBSERVED THAT IN SOME CASES HOST COUNTRIES HAVE AVOIDED MAKING STATEMENTS ON CONTROVERSIAL QUESTIONS.

8. PHILIPPINES REP SAID THAT IT WAS DIFFICULT TO MAKE POLITICAL APPRAISAL THAT CHILE SUGGESTED AT THIS TIME. WHILE COMMON HERITAGE MUST NOT BE REPUDIATED, IT WAS HARD TO SEE NOW WHETHER CONCEPT DICTATED CERTAIN KINDS OF TREATY PROVISIONS. HE STRESSED THAT NEGOTIATIONS MUST BEGIN SOON BUT THAT THEY MUST BE CONDUCTED ON ALL ASPECTS, SPECIFICALLY MENTIONING ARCHIPELAGOES. US PROPOSAL FOR PROVISIONAL REGIME ADDRESSED TO IMPORTANT QUESTION AND DELS MUST USE TIME BEFORE NEXT MEETING TO STUDY PRACTICAL PROBLEMS IT RAISED.

9. PERU SAID HE COULD NOT ACCEPT IDEA THAT COMMON HERITAGE IS MEANINGLESS: THERE IS NO DIFFERENCE BETWEEN COMMON HERITAGE AND COMMON PROPERTY. STATED THAT THERE HAD BEEN COMPROMISE ON ARTICLES DEALING WITH WHO CAN EXPLOIT AREA. NO ALTERNATIVE TEXT IN ART. 9 PRECLUDED EXPLOITATION BY ENTITIES OTHER THAN AUTHORITY AND THUS ENTERPRISE SUPPORTERS WERE NO LONGER EXTREME. LIKEWISE ALTERNATIVES PROPOSED BY THOSE WHO SUPPORTED LICENSING SYSTEM WERE MORE FLEXIBLE. IN RESPONSE TO US COMMENT ON NECESSITY FOR DIVISION BETWEEN AUTHORITY'S REGULATORY AND EXPLOITATION FUNCTIONS, HE FELT THAT ENTERPRISE WOULD NOT BE ABLE TO COMPETE WITH STATES. THIS ISSUE NEEDED TO BE NEGOTIATED.

10. GHANA EXPRESSED OPTIMISM ABOUT NEGOTIATIONS. REFERRING TO US PROVISIONAL REGIME PROPOSAL HE STATED ITS MERIT IS TO ENSURE THAT EXPLOITATION OF SEABED IS NOT DELAYED WHEN CONVENTION COMES INTO EFFECT. HE SAID HE UNDERSTOOD US PROPOSAL TO MEAN THAT REGIME AS NEGOTIATED WOULD COME INTO FORCE.

11. CHILE RESPONDED TO US STATEMENT BY ASSERTING THAT COMMON HERITAGE DOES HAVE MEANING AND TO USSR STATEMENT BY NOTING THAT LDC'S HAD MADE CONCESSIONS TOO. HE STATED THAT BEING HOST COUNTRY DID NOT PREVENT CHILE FROM EXPRESSING OPINIONS AND STRESSED THAT IT WOULD NOT BE CHAIRMAN OF CONFERENCE.

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12. TRINIDAD AND TOBAGO, KENYA AND TANZANIA ASSERTED THAT AREA WAS THE COMMON HERITAGE AND TREATY WAS NOT REQUIRED TO MAKE IT SO. KENYA REP IDENTIFIED FOUR AREAS FOR NEGOTIATION: COMMON HERITAGE, SCOPE OF THE REGIME, WHO MAY EXPLOIT THE AREA AND QUESTION OF RESPONSIBILITY/ LIABILITY. LONG TANZANIA INTERVENTION PRAISED CHILE REP (ZEGERS) FOR ENLIGHTENING SC WITH " REAL MEANING" OF COMMON HERITAGE. CHAIRMAN ENGO IN EFFECT CLOSED DISCUSSION BY DECLARING THAT HISTORICAL- LEGAL DEBATE ON COMMON HERITAGE WAS OUT OF ORDER IN SC. IF DELS FELT COMPELLED TO DEBATE THIS, THEY SHOULD GO BACK TO GENERAL ASSEMBLY, HE ASSERTED. PHILLIPS UNQUOTE ROGERS

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Message Attributes

Automatic Decaptioning: X
Capture Date: 07 MAY 1999
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 16 APR 1973
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1973STATE070709
Document Source: ADS
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: n/a
Film Number: n/a
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1973/newtext/t19730460/abqceihm.tel
Line Count: 206
Locator: TEXT ON-LINE
Office: ORIGIN L
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators:
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: thigpegh
Review Comment: n/a
Review Content Flags:
Review Date: 03 DEC 2001
Review Event:
Review Exemptions: n/a
Review History: RELEASED <03-Dec-2001 by elbezejf>; APPROVED <07 FEB 2002 by thigpegh>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: <DBA CORRECTED> jms 980116
Subject: LOS: SUBCOMMITTEE I, APRIL 5
TAGS: PBOR, UN
To: STOCKHOLM
SANTIAGO
MOSCOW
MANILA
LIMA
ACCRA
Type: TE

Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005